

No. 137

AN ACT

HB 367

Amending the act of June 22, 1964 (P. L. 84), entitled "An act to codify, amend, revise and consolidate the laws relating to eminent domain," variously changing the eminent domain law relating to the declaration of taking, notice, objections, possession, relinquishment, viewers and filing of their reports, additional condemnees, joint claims, guardians, appeals, costs of transcripts, termination of viewer's proceedings, payment of damages into court, removal, dislocation and moving expenses, witnesses, and the board of viewers.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 402 and 404, subsection (e) of section 406, subsections (a) and (c) of section 407, sections 408, 502, 504 and 505, subsection (b) of section 506, sections 507, 508, 510, 513 and 514, clause (1) of subsection (a) of section 516, sections 519, 520, 522, 608, 609 and 610, clause (2) of section 703 and section 704, act of June 22, 1964 (P. L. 84), known as the "Eminent Domain Code," are amended to read:

Section 402. Condemnation; Passage of Title; Declaration of Taking. (a) Condemnation, under the power of condemnation given by law to a condemnor, which shall not be enlarged or diminished hereby, shall be effected only by the filing in court of a declaration of taking, with such security as may be required under section 403 (a), and thereupon the title which the condemnor acquires in the property condemned shall pass to the condemnor on the date of such filing, and the condemnor shall be entitled to possession as provided in section 407.

(b) The declaration of taking shall be in writing and executed by the condemnor, shall be captioned as a proceeding in rem, and shall contain the following:

- (1) The name and address of the condemnor.
- (2) A specific reference to the statute, article and section thereof under which the condemnation is authorized.
- (3) A specific reference to the action, whether by ordinance, resolution or otherwise, by which the declaration of taking was authorized, including the date when such action was taken, and the place where the record thereof may be examined.
- (4) A brief description of the purpose of the condemnation **[and the need therefor]**.

(5) A description **[or plan]** of the property condemned sufficient for the identification thereof, specifying the city, borough, township or town and the county or counties wherein the property taken is located, *a reference to the place of recording in the office of the recorder of deeds of plans showing the property condemned or a statement that plans showing the property condemned are on the same day being lodged for record or filed in the*

office of the recorder of deeds in such county in accordance with section 404 of this act.

(6) A statement of the nature of the title acquired, if any.

(7) A statement specifying where a plan showing the condemned property may be inspected in the county in which the property taken is located.

(8) A statement of how just compensation has been made or secured.

(c) The condemnor may include in one declaration of taking any or all of the properties specified in the action by which the declaration of taking was authorized. The prothonotary shall charge one fee for filing each declaration of taking, which shall be the same regardless of the number of properties or condemnees included therein.

(d) The condemnor shall file within one year of the action authorizing the declaration of taking, a declaration or declarations of taking covering all properties included in such authorization not otherwise acquired by the condemnor within such time.

Section 404. Recording Notice of Condemnation.—The condemnor, upon filing its declaration of taking, shall on the same day lodge for record a notice thereof in the office of the recorder of deeds of the county in which the property is located. If the property is located in two or more counties, the notice shall be recorded in all such counties. The notice shall specify the court term and number of the declaration of taking and the date it was filed, and shall contain a description or plan of the property condemned sufficient for the identification thereof and the names of the owners of the property interests condemned, as reasonably known to the condemnor, and shall be indexed in the deed indices showing the condemnee set forth in the notice as grantor and the condemnor as grantee. [The recorder shall receive as a fee the sum of five dollars (\$5) for recording each notice and twenty-five cents (25¢) for each name indexed.] *If plans are to be recorded as part of the notice they shall be submitted on standard legal size paper. If plans are to be filed as part of the notice they shall be in legible scale, and filed in a condemnation book, with a notation as to the condemnation book or file or microfilm and page number, file number or microfilm number to be made by the recorder on the margin of the notice. The recorder shall receive as a fee for recording each notice the sum of five dollars (\$5) plus one dollar (\$1) for each page recorded after the first, and for filing plans two dollars and fifty cents (\$2.50) for each page or sheet of plan filed and twenty-five cents (25¢) for each name indexed. Upon the notice being assigned a book and page number by the recorder of deeds the condemnor shall file with the prothonotary under the caption of the declaration of taking a memorandum of the book and page number in which the notice is recorded.*

Section 406. Preliminary Objections.—* * *

(e) The court shall determine promptly all preliminary objections and

make such preliminary and final orders and decrees as justice shall require, including the revesting of title. *If preliminary objections are finally sustained, which have the effect of finally terminating the condemnation, the condemnee shall be entitled to damages as if the condemnation had been revoked under section 408, to be assessed as therein provided.* If an issue of fact is raised, the court shall take evidence by depositions or otherwise. The court may allow amendment or direct the filing of a more specific declaration of taking.

Section 407. Possession; Entry; Payment of Compensation.—(a) The condemnor [after filing], *after the expiration of the time for filing preliminary objections by the condemnee* to the declaration of taking, shall be entitled to possession or right of entry upon payment of, or a written offer to pay to the condemnee, the amount of just compensation as estimated by the condemnor. If a condemnee thereafter refuses to deliver possession or permit right of entry, the prothonotary upon praecipe of the condemnor shall issue a rule, returnable in five days after service upon the condemnee, to show cause why a writ of possession should not issue, upon which the court, *unless preliminary objections warranting delay are pending*, may issue a writ of possession conditioned upon payment to the condemnee or into court of such estimated just compensation and on such other terms as the court may direct.

* * *

(c) The compensation paid under subsections (a) and (b) of this section shall be without prejudice to the rights of either the condemnor or the condemnee to proceed to a final determination of the just compensation and the payments heretofore made shall be considered only as payments pro tanto of the just compensation as finally determined. *However, in no event shall the condemnee be compelled to pay back to the condemnor the compensation paid under subsections (a) and/or (b), even if the amount of just compensation as finally determined shall be less than the compensation so paid.*

Section 408. Revocation of Condemnation Proceedings.—The condemnor, by filing a declaration of relinquishment in court within one year from the filing of the declaration of taking, and before having made the payment provided for in section 407 (a) or (b), or as to which the condemnee has not tendered possession of the condemned property as provided in section 407, may relinquish all or any part of the property condemned that it has not taken actual possession of for use in the improvement, whereupon title shall revert in the condemnee as of the date of the filing of the declaration of taking, and all mortgages and other liens existing as of such date shall be reinstated. Notice of said relinquishment shall be recorded in the office of the recorder of deeds of the county in which the property taken is located, with the condemnor as the grantor and the condemnee as the grantee, and the notice of said relinquishment shall be served on the condemnee in the same manner as provided for

service of the declaration of taking. *The fees payable to the recorder for recording the notice of relinquishment shall be in the same amounts as provided in section 404 for the recording of notices of condemnation.* Where condemned property is relinquished, the condemnee shall be entitled to the damages sustained by him including costs, expenses and reasonable attorney's fees and such damages shall be assessed by the court, or the court may refer the matter to viewers to ascertain and assess the damages sustained by the condemnee, whose award shall be subject to appeal as provided in this act. The condemnor and the condemnee, without the filing of declaration of relinquishment provided herein, may by agreement effect a revesting of title in the condemnee, *which agreement shall be properly recorded.*

Section 502. Petition for the Appointment of Viewers.—(a) The condemnee may file a petition requesting the appointment of viewers, setting forth:

(1) A caption which shall be the caption of the proceeding substantially as set forth in *the* declaration of taking, with an identification of the petitioner and his property. *The petitioner shall be designated as the plaintiff. Except as otherwise ordered by the court, the viewers' proceedings shall be at the same court term and number as the declaration of taking.*

(2) The date of the filing of the declaration of taking and whether any preliminary objections thereto have been filed *and remain undisposed of.*

(3) The name of the condemnor.

(4) The names and addresses of all condemnees *and mortgagees* known to the petitioner to have an interest in his property and the nature of their interests.

(5) A brief description of his property which may include any or all of his properties [*included in the declaration of taking*] *in the same county taken, injured or destroyed for the same purpose by the condemnor, whether by the same or separate declarations or without a declaration of taking.*

(6) A request for the appointment of viewers to ascertain just compensation.

(b) The condemnor may file a petition requesting the appointment of viewers, setting forth:

(1) A caption which shall be the caption of the proceeding substantially as set forth in the declaration of taking, *to which shall be added the name of the condemnee as plaintiff as to whose property the petition is filed and the name of the condemnor as defendant. If there is more than one condemnee it shall be sufficient to designate the name of the first condemnee as the plaintiff with appropriate indication of other condemnees. Except as otherwise ordered by the court, the viewers' proceedings shall be at the same term and number as the declaration of taking.*

(2) The date of the filing of the declaration of taking and whether any preliminary objections thereto have been filed *and remain undisposed of*.

(3) The names and addresses of all condemnees known to the petitioner to have an interest in the property which is the subject of the petition and the nature of their interests.

(4) A brief description of the property which is the subject of the petition and the interest condemned.

(5) A request for the appointment of viewers to ascertain just compensation.

(c) The condemnor may include in its petition any or all of the property included in the declaration of taking.

(d) The court appointing the viewers may **[direct them to determine, at the request of either party, the damages for any property included in a declaration of taking], on its own motion or at the request of a party, direct them to determine the damages for any or all of the properties included in the declaration of taking or any or all properties taken, injured or destroyed for the same purpose by a condemnor without a declaration of taking.**

(e) If there has been a compensable injury suffered and no declaration of taking therefor has been filed, a condemnee may file a petition for the appointment of viewers substantially in the form provided for in subsection (a) of this section, setting forth such injury.

(f) A copy of any petition for the appointment of viewers filed by a condemnee shall be **[served promptly on the condemnor named therein] sent promptly by registered or certified mail, return receipt requested, to the adverse party.**

(g) *The court, in furtherance of convenience or to avoid prejudice, may on its own motion or on motion of any party, order separate viewers' proceedings or trial when more than one property has been included in the petition.*

Section 504. Appointment of Viewers; Notice; *Objections*. —Upon the filing of a petition for the appointment of viewers, the court, unless preliminary objections to the validity of the condemnation or jurisdiction, warranting delay, are pending, shall promptly appoint three viewers, who shall view the premises, hold hearings, and file a report. *The prothonotary shall promptly notify the viewers of their appointment unless a local rule provides another method of notification.*

The viewers shall promptly give written notice *by registered or certified mail, return receipt requested*, of their appointment to all persons named as condemnors or condemnees in the petition for the appointment of viewers and of the place and time of the view, which shall not be less than twenty days from the date of said notice.

If notice of the view does not include notice of a time and place of subsequent hearings and a time and place is not agreed upon by the parties at the view, notice of the hearing shall be given by not less than ten days'

written notice *by registered or certified mail, return receipt requested.*

Any objection to the appointment of viewers not theretofore waived may be raised by preliminary objections filed within twenty days after receipt of notice of the appointment of viewers. Objections to the form of the petition or the appointment or the qualification of the viewers are waived unless included in preliminary objections. The court shall determine promptly all preliminary objections and make such orders and decrees as justice shall require. If an issue of fact is raised, evidence may be taken by deposition or otherwise as the court shall direct.

Section 505. Service of Notice of View and Hearing.—Notice of the view and hearing shall be served, within or without the Commonwealth, by any competent adult in the same manner as a [complaint or] writ of summons in assumpsit, or by certified or registered mail, return receipt requested, to the last known address of the condemnee and condemnor. If service cannot be made in the manner so provided, then service shall be made by posting a copy of the notice upon [the most] a public part of the property and by publication, at the cost of the condemnor, once in a newspaper of general circulation and once in the legal publication, if any, designated by rule or order of court for publication of legal notices, published in the county. Proof of service and the manner of same shall be attached to the viewers' report.

Section 506. Additional Condemnees; Mortgagees.—* * *

(b) The court may permit a mortgagee, *judgment creditor or other lienholder* to intervene in the proceedings where his interest is not adequately protected, but he shall not be a party to the proceedings unless he has intervened.

Section 507. Joint Claims Required; Apportionment of Damages; *Separate Hearings Allowed.*—(a) The claims of all the owners of the condemned property, including joint tenants, tenants in common, life tenants, remaindermen, owners of easements, *or ground rents*, and all others having an interest in the property, and the claims of all tenants, if any, of the property, shall be heard or tried together and the award of the viewers or the verdict on appeal from the viewers shall first fix the total amount of damages for the property, and second, apportion the total amount of damages between or among the several claimants entitled thereto.

(b) *Claims for removal expenses, business dislocation damages and moving expenses may be heard or tried separately.*

Section 508. Appointment of Trustees *or Guardian Ad Litem.*—The court, on its own motion may, or on petition of any party in interest shall, appoint a trustee ad litem [to represent the interests of minors, persons under a disability, unborn or unascertained parties, or parties whose whereabouts are unknown] *or guardian ad litem, as may be appropriate, in accordance with the Rules of Civil Procedure.*

Section 510. Powers of Viewers.—The viewers shall have power to

administer oaths and affirmations, [to compel the attendance of witnesses, the production of books and documents,] and to adjourn the proceedings from time to time. *Upon request of the viewers or a party, the court which appointed the viewers shall issue a subpoena to testify or to produce books and documents.* All the viewers shall act, unless prevented by sickness or other unavoidable cause; but a majority of the viewers may hear, determine, act upon and report all matters relating to the view for which they were appointed.

Section 513. [Notice of] Filing of Report of Viewers.— *The viewers shall file their report within thirty days of their final hearing or within thirty days from the filing of the transcription of the stenographic notes of testimony, which transcription shall be filed within thirty days of the final hearing.* Ten days before the filing of their report, the viewers shall mail a copy thereof to all parties or their attorneys of record, with notice of the date of the intended filing and that the report shall become final unless an appeal therefrom is filed within thirty days from the date the report is filed. Prior to the filing of their report they may correct any errors therein and give notice thereof to the persons affected.

Section 514. Reports.—The viewers may include in one report one or more properties *or claims under sections 608, 609 and 610* referred to them under the same or separate petitions provided such properties are included in the same declaration of taking. *The viewers may file a separate report for removal expenses, business dislocation damages and moving expenses.* Each such report shall be final as to the property or properties included therein and subject to separate appeal.

Section 516. Appeals.—(a) The appeal shall set forth:

(1) The name of appellant *and appellee.*

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Section 519. Costs of Proceedings.—All taxable costs, including filing fees, jury fees, statutory witness fees and mileage, expense of preparing plans under section 509, the expense of transporting the judge and jury to view the condemned property, *transcripts of the stenographic notes of the trial in court on appeal,* and such other costs as the court in the interests of justice may allow, shall be paid by the condemnor unless the court in a proper case shall otherwise direct.

Section 520. Waiver of Viewers' Proceedings; *Termination by Stipulation.*—(a) The condemnor and condemnee may, by written agreement filed with and approved by the court, waive proceedings before viewers and proceed directly to the said court, on agreed issues of law or fact. The proceedings thereafter shall be the same as on appeal from a report of viewers.

(b) *At any time after the filing of a petition for the appointment of viewers, the parties may by stipulation filed with the prothonotary terminate the viewers' proceedings as to all or part of the properties involved and stipulate that judgment may be entered for the amount of*

damages agreed on for each property interest covered by the stipulation. A copy of the stipulation shall be filed with the viewers.

Section 522. Payment into Court; Distribution.—Upon refusal to accept payment of the damages, *or of the estimated just compensation under section 407*, or if the party entitled thereto cannot be found, or if for any other reason the **[damages]** *same* cannot be paid to the party entitled thereto, the court upon petition of the condemnor which shall include a schedule of proposed distribution, may direct payment **[of the damages]** *thereof* and costs into court or as the court may direct in full satisfaction thereof.

The court thereafter upon petition of any party in interest shall distribute such funds or any funds deposited in court under section 407 to the persons entitled thereto in accordance with the procedure in section 521, but if no petition is presented within a period of five years of the date of payment into court, the court shall order the fund or any balance remaining to be paid to the Commonwealth without escheat. No fee shall be charged against these funds.

Section 608. Removal Expenses.—The person having legal possession of machinery, equipment or fixtures on the condemned property, not forming part of the realty, including a tenant not entitled to any proceeds of the condemnation, if under the lease the tenant has the right to remove said machinery, equipment or fixtures, shall be entitled, as damages, to the reasonable expenses of the removal, transportation and reinstallation of such machinery, equipment or fixtures, **[Reasonable expenses under the provisions of this section shall not exceed twenty-five thousand dollars (\$25,000) and in]** *or the value in place of such as cannot be moved without substantially destroying its value. In* no event shall such expenses exceed the market value of the machinery, equipment and fixtures.

Section 609. Business Dislocation Damages.—The condemnee shall be entitled to damages, as provided in this section, for dislocation of a business located on the condemned property, but only where it is shown that the business cannot be relocated without substantial loss of patronage. Compensation for such dislocation shall be the actual monthly rental paid for the business premises, or if there is no lease, the fair rental value of the business premises, multiplied by the number of months remaining in the lease, not including unexercised options, not to exceed twenty-four months or multiplied by twenty-four if there is no lease. The amount of such compensation paid shall not exceed five thousand dollars (\$5000) and shall not be less than two hundred fifty dollars (\$250), *regardless of the number of months remaining in the lease or the monthly rental.* A tenant shall be entitled to recover for such business dislocation even though not entitled to any of the proceeds of the condemnation.

Section 610. Moving Expenses.—The person having legal possession shall be entitled to, as damages, the reasonable moving expenses for

personal property other than machinery, equipment or fixtures. [**not to exceed five hundred dollars (\$500), when personal property is moved from a place of residence and not to exceed twenty-five thousand dollars (\$25,000) when personal property is moved from a place of business**] Receipts therefor shall be prima facie evidence of reasonable moving expenses. A tenant shall be entitled to recover these moving expenses even though he is not entitled to any of the proceeds of the condemnation. In no event shall such expenses exceed the market value of such personal property.

Section 703. Trial in the Court of Common Pleas on Appeal.—At the trial in court on appeal:

* * *

(2) If any valuation expert who has not previously testified before the viewers is to testify, the party calling him must disclose his name and serve a statement of his valuation of the property before and after the condemnation and his opinion of the highest and best use of the property before the condemnation and of any part thereof remaining after the condemnation, on the opposing party at least ten days before the [**date when the case is listed for pre-trial or trial, whichever is earlier**] *commencement of the trial.*

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Section 704. Competency of Condemnee as Witness.—The condemnee or an officer of a corporate condemnee, *without further qualification, may testify as to just compensation, without compliance with the provisions of section 703 (2).*

Section 2. Section 801 of the act is amended to read:

Section 801. Board of Viewers.—There shall be in each county a board of viewers to consist of not less than three [**nor more than nine**] members who shall be appointed by the judges of the court of common pleas for a term of not less than three nor more than six years, whether such appointment be for an original or partly expired term. In counties of the first class the board of viewers may be appointed from among the members of the board of revision of taxes of such counties. The judges shall, in each case, *determine [within the aforesaid limits,] the total number of members of which the board shall be composed, fixing and determining such number as shall be necessary for the proper performance of the duties imposed upon the board. The judges may change the total number of members within the above [limits] limit.*

Section 3. This act shall take effect immediately and shall apply to all condemnations effected thereafter, except that the provisions of sections 502, 504, 506, 507, 508, 510, 513, 514, 516, 520, ~~522~~, 703 (2) and 704 of the Eminent Domain Code as herein amended shall also apply to all steps taken subsequent to the effective date of this act in all condemnation proceedings in which the condemnation was effected prior to the effective date of this act.

APPROVED—The 5th day of December, A. D. 1969.

RAYMOND P. SHAFER

The foregoing is a true and correct copy of Act of the General Assembly
No. 137.


Secretary of the Commonwealth.